IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 604 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAP MOHANBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS.SHILPA R SHAH for the Appellant
MR.H.M.PRACHCHAK, ADDL.PUBLIC PROSECUTOR for the Respondent

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 04-05/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This appeal arises out of the judgment and order rendered by the learned Additional Sessions Judge,

Ahmedabad Rural, on 2/5/1997 in Sessions Case No.29 of 1994, convicting the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code. The appellant was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default of which to undergo simple imprisonment for one year for offence punishable under Section 302 of Indian Penal Code, and was further sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default of which to undergo simple imprisonment for a period of six months for the offence punishable under Section 201 of the Indian Penal Code. Both the sentences were ordered to run concurrently and the accused was ordered to be given benefit of set of.

2. The appellant is alleged to have murdered his wife-Manjula on 22/1/1993 by causing injuries on her head with an iron pestle at about 3:00 p.m. in the afternoon. It is also alleged that after the incident, the appellant tried to destroy the evidence by setting the dead body of Manjula ablaze. The appellant is thus alleged to have committed offence punishable under Sections 302 and 201 of the Indian Penal Code. As per the prosecution case, the incident was witnessed by Bhima Arvindbhai, who is a child witness. Bhima happens to be the son of the brother of the deceased. The incident occurred in the

house of the appellant at Village Arnej of Taluka Dholka. As per the prosecution case, the appellant and the deceased were married about eight months prior to the date of the incident and were staying together. It transpires that the deceased had made some complaint about the appellant being in habit of gambling. Lastly, when the deceased had gone to her parental house, she had also taken with her her brother's son-Bhima to her marital home. On the day of the incident, the appellant had started for his work in the morning as usual. In the afternoon the deceased and her brother's son aged about 8 years were at home. Around 3:00 p.m. in the afternoon, the appellant came home. It appears that he had a quarrel with the deceased and the appellant gave pestle blows on head of the deceased causing two independent distinct injuries of serious nature resulting in her death. This was witnessed by Bhima. He ran away from the place. It appears that after the incident, an occurrence report was filed with Police at Bagodara by grandmother of the appellant; wherein she indicated that her grandson had gone out on the day of incident and she was at the house alongwith deceased-Manjulaben. In the afternoon, she went to the bore well for washing clothes and when she returned at about 3:00 p.m., she found that the door to the house was ajar and deceased-Manjulaben was lying burnt and beside her; a primus was lying. She,

therefore, immediately went to the Sarpanch-Narubhai and informed him that for some unknown reasons Manjula had set herself ablaze. Sarpanch had sent her to the Police and therefore, the information. However, father of the deceased-Bholabhai Bhagvanbhai on receiving the message about Manjula having been sustained burns injuries started from Junagadh and reached Dholka and learnt that Manjula had already expired. From there he went to Arnej and was informed that the dead body was lying at the Government Hospital at Bavla. He lodged the F.I.R. with Police alleging that the appellant had murdered the deceased by causing injuries on her head and had thereafter set her ablaze by pouring kerosene over the dead body. On basis of said F.I.R., the investigation was made and charge-sheet was filed in the Court of J.M.F.C., Dholka. Since the offences alleged against the appellant were triable exclusively by the Court of Sessions, learned J.M.F.C., Dholka committed the case to the Court of Sessions at Ahmedabad and Sessions Case No.29 of 1994 came to be registered.

2.1 When the matter became ripe charge was framed at Exh.5 on January 13, 1996 for the offences punishable under Sections 302 and 201 of the Indian Penal Code. The accused-appellant pleaded not guilty to the charge and claimed to be tried. He was afforded services of

Advocate for his defence at the government cost.

2.2 Evidence was led by the prosecution, as well as, by the defence and on consideration thereof the trial Court came to a conclusion that prosecution was successful in establishing charges against the accused-appellant and recorded conviction as stated above. Aggrieved by the said judgment and order, present appeal is preferred.

3. Learned Advocate, Ms.Shah, for the appellant submitted that the learned trial Judge has committed an error in appreciating the evidence. According to Ms.Shah, the prosecution case hangs on solitary oral evidence of child witness-Bhima. The deposition of child witness, if seen, would indicate that he was too young to depose and his conduct at the time of incident also indicated that what he says is not wholly reliable. According to Ms.Shah, when the prosecution case hangs on such a scanty piece of evidence, the trial Court could not have recorded conviction.

3.1 Ms.Shah, submitted that the defence has examined two witnesses. The defence witness No.1-Amrutben in terms says that Bhima was not present on the day of incident. This aspect has also been ignored by the trial

Court.

3.2 Ms.Shah, submitted that undoubtedly, the injuries caused to the deceased were of a serious nature and it was a case of homicidal, as is emerging from medical evidence, but to connect the accused-appellant with the said offences, the evidence is very scanty and therefore, the appeal may be allowed.

3.3 By way of an alternative plea, Ms. Shah, submitted that here is a case where there is evidence to show that there was some quarrel between the accused-appellant and deceased. The appellant may have lost control because of provocation that may have been given to him by the deceased and the incident may have occurred. This possibility cannot be ruled out and therefore the case may be considered so as to fall under an exception to Section 300 of the Indian Penal Code. According to her, the case would be punishable under Section 304 Part-II of the Indian Penal Code and, therefore, the appeal may be partly allowed to that extent.

4. Learned Add. Public Prosecutor, Mr.Prachchak, has opposed this appeal. According to him presence of Bhima is not at all doubtful. The suggestion made in

cross-examination to Bhima is firmly denied by him about him being not present at the time and place of the incident. Say of Bhima that he was present at the time of incident is tried to be falsified by defence by examining Amrutben, but learned A.P.P., pointed out that Prosecution Witness No.3-Jayaben Polabhai and Prosecution Witness No.7-Arvindbhai Polabhai in their depositions have categorically stated that minor Bhima had accompanied the deceased to her matrimonial home when she lastly left her parental home.

4.1 Mr.Parchchak, submitted that the injuries caused on the deceased speak volumes about the intention of the accused-appellant. There are two head injuries caused with a pestle resulting into multiple fractures on skull on the spot and the parietal bone getting embedded into the brain substance.

4.2 Mr.Prachchak, submitted that apart from this there is evidence in form of discovery of weapon by the appellant. The said weapon is found to be in blood stained condition and the blood stains are of the blood group of the deceased, as can be seen from the report of the F.S.L. The injuries are indicated to be sufficient to cause death in ordinary course of nature. They are attributable to the appellant alone and, therefore, the

trial Court has rightly convicted the appellant for offence of murder.

4.3 So far as offence punishable under Section 201 of the Indian Penal Code is concerned, Mr.Prachchak, submitted that the appellant has tried to set the dead body of deceased-Manjulaben ablaze and thereby destroy the evidence. His grandmother has in her deposition during cross-examination to the Public Prosecutor made certain admissions on question as to how the incident has occurred and how the cross F.I.R. came to be lodged, which would render her deposition of no support or benefit to the accused-appellant. Mr.Prachchak, submitted that the prosecution has proved the guilt of appellant to the hilt and, therefore, the appeal may be dismissed.

5. We have gone through the records and proceedings.

6. The prosecution has examined following witnesses.

i)Dr.Harishbhai Gemarbhai Jadav, Medical Officer, who Performed postmortem over the dead body Exh.30.

ii)Polabhai Bhagvanbhai, Exh.33, Complainant and father of the deceased.

iii)Jayaben Polabhai, Exh.36, mother of the

deceased.

iv)Abbasbhai Kasambhai, Exh.37, neighbour of the complainant.

v)Bhimabhai Arvindbhai, Exh.38, nephew of the deceased.

vi)Hathubhai Babubhai Daghi, Exh.47, Panchwitness.

vii)Arvindbhai Polabhai, Exh.42, brother of the deceased.

viii)Babubhai Devsinhbhai, Exh.50, P.S.I. & Investigating Officer.

7. The prosecution has adduced following documentary evidence.

i)Copy of the complaint – Exh.34.

ii)Inquest Panchnama – Exh.8.

iii)Police Report (Mark 7/3) – Exh.9 .

iv)Panchnama of the place of incident – Exh.10.

v)Panchnama (Mark 7/5)) - Exh.11 .

vi)Receipt of samples collected during the postmortem – Exh.12.

vii)Postmortem Note – Exh.31.

viii)Yadi – Exh.32.

ix)Inland letter card – Exh.35.

x)Charge-sheet – Exh.37

xi)Panchnama (Mark 7/11) – Exh.41.

8. The defence has examined two witnesses.

i)Amrutben, widow of Khodabhai Bapubhai &

grandmother of accused, Exh.54.

ii)Ghanshyamsinh Babusinh Chudasama, Exh.57, P.S.O., Bagodara Police Station

8.1 The defence has also led following documentary evidence.

i) F.I.R. - Exh.58.

9. Dr.Harishbhai Jadav is examined at Exh.30 as Prosecution Witness No.1. He says that he had performed the postmortem on the dead body of deceased-Manjula as a panel doctor, while he was working at the Primary Health Center at Bavla alongwith Dr.C.V.Barad. He has described the injuries found on person of the deceased. He has stated that there was lacerated wound on right fronto parietal region of the size of 3″ x 1″ x bone piece and brain tissue coming out in fronto posterior direction. The second injury was a lacerated wound on right parietal occipital region behind ear of the size of 2&½″ x 1″ x bone piece and brain tissue coming out transversing direction and thirdly there were postmortem burn injuries on neck, upper limb, chest, abdomen, both the lower limbs where deep tissue muscle were burnt in abdomen, thighs, etc. The doctor says that he had noticed gaping fracture in right fronto parietal region, gaping fracture in right parietal occipital bone with multiple pieces of bone

embedded into brain tissue in both the injuries. According to the doctor, the cause of death was hemorrhage due to injury to skull and brain substance. The doctor also opined that the external injuries No.1 and 2 were possible with muddamal pestle which were ante-mortem. He also opined that the burn injuries were not ante-mortem. It is thus clear that the deceased met with a homicidal death. The injuries could not have been either accidental or suicidal.

10. Now, comes the question as to who caused death of the deceased. In this regard, there is direct evidence of witness-Bhimabhai Arvindbhai, Prosecution Witness No.5 (Exh.38). When he deposed before the Court on 24/4/1996, he was aged about 10 years. Differently put when the incident occurred he was about 8 & ½ years old. Before administering oath, learned Judge recorded a satisfaction by questioning this child witness that he understood the seriousness of oath. The learned Judge recorded that the boy seems to be quite matured and smart and thereafter administered oath.

10.1 This witness says that the deceased-Manjulaben was his father's sister and was married to the appellant whom he identified in the Court. He says that he had gone to Arnej with Manjulaben for an outing. On the day

of the incident, he was playing with Manjulaben in the home, at that time the appellant came and quarreled with deceased-Manjula. Thereafter, the appellant hit deceased-Manjula with an iron pestle as a result of which Manjula became unconscious and started bleeding from head. He has also identified the muddamal pestle. He has stated that it was this pestle with which the appellant had caused injuries to the deceased. He says that Police had interrogated him.

10.2 This witness is cross-examined at length by the defence, but the deposition has remained unshaken. During cross-examination, it is tried to indicate that he had not stated before Police that the pestle was of iron, but he did state that the injury was caused with pestle. Likewise, during cross-examination he says that he was playing cards with Manjula but, then he admits that in statement before Police, he had stated that he was playing some other game. Despite a close scrutiny, we could not notice any contradictions, omissions or material which would render the deposition of this child witness doubtful or incredible on his version about the incident. On the contrary, we notice that the deposition is given in a very natural way and witness is found to have deposed correct facts. Not stating before Police that it was iron pestle or his being engaged in playing

some other game with deceased are factors which are of no consequence or significance for testing veracity of this child witness. He has stated that pestle was used in incident. He also states that he was playing. After all, the witness is a child witness and arithmetical precision cannot be expected of him. We therefore, conclude that the witness is reliable.

10.3. Now, comes the question as to whether this deposition can be doubted on question whether he was really present over there or not. In this regard, deposition of Jayaben Polabhai, Prosecution Witness No.3 (Exh.36) and Arvindbhai Polabhai, Prosecution Witness No.7 (Exh.42) clearly indicate that Bhima had gone to Arnej with deceased-Manjulaben, when she last left her parental house. Suggestion put to this witness that Bhima had not gone to Arnej with Manjula and that Bhima was not present at the time of incident, have been firmly denied by these witnesses. Thus, there is no reason to doubt presence of Bhima at the place of the incident though defence witness No.1, Amrutben has stated in her deposition that Bhima was not present. We will indicate why much credence cannot be given to deposition of Amrutben in the later part of this judgment.

11. It is worth a note that there are certain other circumstances going against the appellant. These

circumstances are that he has discovered the weapon in presence of the Panchwitnesses, who have supported the prosecution case. The weapon, when discovered, was found blood stained and was sent to F.S.L. for chemical examination. The F.S.L. Report indicates that pestle contained human blood of group 'A' which was obviously of the deceased. Therefore, the trial Court was justified in coming to the conclusion that the prosecution was successful in establishing that the accused-appellant caused death of his wife-Manjula.

12. Now, comes the question whether the case can fall in any of the exceptions to Section 300 as is sought to be canvassed by learned Advocate, Ms.Shah. In this regard, it would be appropriate to note that though there is a reference to a quarrel, there is no material to infer that the incident occurred suddenly for the appellant or that provocation was caused to the appellant or that the provocation was sudden and strong enough to result into loss of self-control by the appellant. On the contrary, if the deposition of Bhima is seen, he says that it was the appellant who quarreled with deceased–Manjulaben then inflicted the pestle blows. In absence of any material to infer presence of circumstances indicated in exceptions to Section 300 of the Indian Penal Code, it is not possible to accept the contention

raised by learned Advocate, Ms.Shah for the appellant.

13. The deposition of Arvindbhai Polabhai, Prosecution Witness No.8 (Exh.42) is also relevant. He is the brother of the deceased and father of witness-Bhima. During his cross-examination, it emerges that on the day of the incident, Bhima could be located at about 1:15 a.m. at night. He admits to have stated before Police that for unknown reasons, his brother-in-law (present appellant) has caused death of his sister-Manjula with a deadly weapon and has thereafter set her ablaze. This would implicate the appellant for both the offences.

05/04/2006

14. Now, the question that requires consideration is whether conviction under Section 201 of the Indian Penal Code is sustainable. On screening the evidence, we find evidence of Dr.Harish Jadav, who has been examined at Exh.30, which indicates that the burns injuries were postmortem. If that is so, the injury could not be either suicidal or accidental or homicidal. Obviously, therefore, these injuries are caused with a view to destroy the evidence and in this regard, it would be appropriate to refer to the evidence of Defence Witness

No.1-Amrutben, widow of Khoda Bapubhai, (Exh.54). She is the grandmother of the appellant. In her examination in chief, she states that the incident occurred while the deceased was alone at the house. During cross-examination to the learned A.P.P., she has admitted that in order to save the appellant, she had stated in her occurrence report that the appellant had gone outstation. It also transpires that the said occurrence report was given by Sarpanch-Narubhai in the name of Defence Witness-Amrutben. One thing is certain that involvement of the appellant in the incident of murder is established through witness-Bhima, who after seeing the incident flees from the place. This is a natural conduct of a child in such a situation. Defence Witness No.1-Amrutben comes to home at a later point of time and finds the deceased suffering burns. These circumstances viz. the burns injuries are postmortem, the death is caused by appellant, Amrutben on reaching home finds deceased in burning condition, clearly indicate the only possibility of the appellant having set the dead body ablaze and only purpose behind this could be the destruction of evidence. The trial Court, was therefore, justified in recording conviction of the appellant for offence punishable under Section 201 of the Indian Penal Code.

15. So far as the defence witnesses are concerned, Defence Witness No.1, Amrutben (Exh.54), is the

grandmother of the appellant. She states that when the incident occurred, nobody was at home, except the deceased. The appellant had gone out of station and witness herself had gone to wash clothes and when she returned she found that door was ajar and that the deceased was in flames. She then, approached the Sarpanch and then gave occurrence report. During cross-examination, she admits that occurrence report was given by Sarpanch in her name and it was given in a manner to save the appellant and she was, therefore, stated that he (appellant) was gone out of station. Her deposition therefor cannot be given any credence and evidence of child witness-Bhima will outweigh evidence of Amrutben.

15.1 The defence witness No.2, Ghanshyamsinh Babusinh Chudasama (Exh.57) is the Police Officer, who has recorded the occurrence report. He says that Narubhai had not accompanied with Amrutben. From the occurrence report, he found that it was a case of accidental death and registered as such.

15.2 As such, therefore, the version emerging from the defence witnesses reveal nothing which can be of any help to the appellant. On the contrary, the material corroborates the prosecution case to some extent, as discussed above.

16. In the opinion of this Court, the judgment and order impugned in this appeal does not call for any interference in exercise of appellate powers. The conviction has rightly been recorded. No circumstances are indicated to interfere with the quantum of punishment either. We, therefore, confirm the judgment and order impugned herein. Appeal stands dismissed.

(A.L.DAVE, J.)

(S.R.BRAHMBHATT, J.)

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